

**ASSEMBLY BILL**

**No. 1256**

---

**Introduced by Assembly Member Caballero  
(Principal coauthor: Assembly Member Hancock)**

February 23, 2007

---

An act to amend Section 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1256, as introduced, Caballero. Density bonus: exemption: local inclusionary ordinance.

The Planning and Zoning Law requires a city, county, or city and county to provide a housing developer with a density bonus and other incentives or concessions for the production of lower income housing units or the donation of land within a development when the developer proposes a housing development within the local government's jurisdiction and meets certain requirements. This law requires that an applicant for a bonus agree to continued affordability for 30 years or longer of low-and very low-income units that qualified the applicant for the award of the density bonus.

This bill would exempt a city, county, or city and county from complying with the density bonus requirement, and the incentive and concession requirement, if the local government has in effect a local inclusionary ordinance, as specified, that meets certain requirements.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. The Legislature finds and declares all of the  
2 following:

3     (a) Local agencies should be encouraged to use every policy or  
4 program possible to expand the supply of affordable housing in  
5 California.

6     (b) Market-rate housing developments, while important in  
7 increasing the state's housing supply, create a need for more  
8 affordable housing. Residents of market-rate homes draw on the  
9 services of law enforcement personnel, firefighters, teachers, retail  
10 clerks, and others who often do not earn enough income to afford  
11 a market-rate home in many California communities.

12     (c) Cities and counties throughout the state are increasingly  
13 relying on inclusionary housing policies to expand the supply of  
14 housing affordable to very low-, low-, and moderate-income  
15 households in their communities.

16     (d) Local inclusionary policies and the state density bonus law,  
17 set forth in Section 65915 of the Government Code, have the same  
18 goal of ensuring that affordable housing units are constructed in  
19 conjunction with market-rate developments. The application of  
20 the state's density bonus law, however, has caused confusion  
21 among local agencies that have adopted inclusionary housing  
22 policies by imposing a parallel program with different standards.  
23 Those competing standards have made it very difficult for cities  
24 and counties to effectively apply and enforce local inclusionary  
25 policies.

26     (e) Given the important role that local inclusionary policies play  
27 in providing affordable housing, those ordinances should not be  
28 judged by the state as a constraint on the supply of housing.

29     SEC. 2. Section 65915 of the Government Code is amended  
30 to read:

31     65915. (a) ~~When~~ (1) *Except as provided in paragraph (2),*  
32 *when* an applicant seeks a density bonus for a housing development  
33 within, or for the donation of land for housing within, the  
34 jurisdiction of a city, county, or city and county, that local  
35 government shall provide the applicant incentives or concessions  
36 for the production of housing units and child care facilities as  
37 prescribed in this section. All cities, counties, or cities and counties

1 shall adopt an ordinance that specifies how compliance with this  
2 section will be implemented.

3 (2) *When an applicant is required to include a percentage of*  
4 *homes affordable to very low-, low-, or moderate-income*  
5 *households within a housing development by an ordinance adopted*  
6 *by a city, county, or city and county, the local government that*  
7 *adopted the ordinance shall not be required to comply with this*  
8 *section if the local ordinance includes all of the following:*

9 (A) *A requirement that at least 10 percent of the residential*  
10 *units in a proposed development must be affordable to very low-,*  
11 *low-, or moderate-income households, except that a local agency*  
12 *may exclude developments of nine residential units or less from*  
13 *the inclusionary requirement.*

14 (B) *The option of allowing the applicant to donate land with*  
15 *appropriate zoning and other agency approvals to the local*  
16 *government or a nonprofit housing developer in lieu of the*  
17 *inclusionary requirement, if the donated land is proportional in*  
18 *value to the inclusionary requirement.*

19 (C) *If the ordinance allows the option of paying an in lieu fee,*  
20 *a requirement that the amount of the fee must be proportional to*  
21 *the cost of constructing the inclusionary units.*

22 (D) (i) *A requirement that the residential units remain*  
23 *affordable for a minimum of 30 years. If the ordinance allows a*  
24 *residential unit to be sold at fair market value before the expiration*  
25 *of 30 years, a requirement that the local government recapture at*  
26 *least its initial subsidy and its proportionate share of appreciation*  
27 *upon resale of the unit. A local government may elect to recapture*  
28 *a lesser share of appreciation during the affordability period as*  
29 *long as the average recapture of appreciation over the affordability*  
30 *period is equal to the local government's proportionate share of*  
31 *appreciation. However, a local government may not recapture an*  
32 *amount greater than the difference between the residential unit's*  
33 *initial sales price and its actual resale price at fair market value.*

34 (ii) *For purposes of this subparagraph, the initial subsidy is*  
35 *equal to the unrestricted fair market value of the residential unit*  
36 *at the time of initial sale, minus the initial sales price to the*  
37 *moderate-, low-, or very low-income household. Appreciation is*  
38 *equal to the difference between the residential unit's unrestricted*  
39 *fair market value at the time of initial sale and its actual resale*  
40 *price at fair market value. The proportionate share of appreciation*

1 *is equal to the ratio of the initial subsidy to the unrestricted fair*  
2 *market value of the residential unit at the time of initial sale.*

3 *(3)The requirements described in paragraph (2) set a minimum*  
4 *threshold for exemption of a local government from this section.*  
5 *This subdivision does not prohibit a city, county, or city and county*  
6 *from adopting an inclusionary housing requirement that does not*  
7 *meet the requirements described in paragraph (2).*

8 (b) (1) ~~A~~Unless it is exempted from this section in accordance  
9 with subdivision (a), a city, county, or city and county shall grant  
10 one density bonus, the amount of which shall be as specified in  
11 subdivision (g), and incentives or concessions, as described in  
12 subdivision (d), when an applicant for a housing development  
13 seeks and agrees to construct a housing development, excluding  
14 any units permitted by the density bonus awarded pursuant to this  
15 section, that will contain at least any one of the following:

16 (A) Ten percent of the total units of a housing development for  
17 lower income households, as defined in Section 50079.5 of the  
18 Health and Safety Code.

19 (B) Five percent of the total units of a housing development for  
20 very low income households, as defined in Section 50105 of the  
21 Health and Safety Code.

22 (C) A senior citizen housing development as defined in Sections  
23 51.3 and 51.12 of the Civil Code, or mobilehome park that limits  
24 residency based on age requirements for housing for older persons  
25 pursuant to Section 798.76 or 799.5 of the Civil Code.

26 (D) Ten percent of the total dwelling units in a common interest  
27 development as defined in Section 1351 of the Civil Code for  
28 persons and families of moderate income, as defined in Section  
29 50093 of the Health and Safety Code, provided that all units in the  
30 development are offered to the public for purchase.

31 (2) For purposes of calculating the amount of the density bonus  
32 pursuant to subdivision-~~(f)~~ (g), the applicant who requests a density  
33 bonus pursuant to this subdivision shall elect whether the bonus  
34 shall be awarded on the basis of subparagraph (A), (B), (C), or (D)  
35 of paragraph (1).

36 (c) (1) An applicant shall agree to, and the city, county, or city  
37 and county shall ensure, continued affordability of all low-and  
38 very low income units that qualified the applicant for the award  
39 of the density bonus for 30 years or a longer period of time if  
40 required by the construction or mortgage financing assistance

1 program, mortgage insurance program, or rental subsidy program.  
2 Rents for the lower income density bonus units shall be set at an  
3 affordable rent as defined in Section 50053 of the Health and Safety  
4 Code. Owner-occupied units shall be available at an affordable  
5 housing cost as defined in Section 50052.5 of the Health and Safety  
6 Code.

7 (2) An applicant shall agree to, and the city, county, or city and  
8 county shall ensure that, the initial occupant of the  
9 moderate-income units that are directly related to the receipt of  
10 the density bonus in the common interest development, as defined  
11 in Section 1351 of the Civil Code, are persons and families of  
12 moderate income, as defined in Section 50093 of the Health and  
13 Safety Code, and that the units are offered at an affordable housing  
14 cost, as that cost is defined in Section 50052.5 of the Health and  
15 Safety Code. The local government shall enforce an equity-sharing  
16 agreement, unless it is in conflict with the requirements of another  
17 public funding source or law. The following apply to the  
18 equity-sharing agreement:

19 (A) Upon resale, the seller of the unit shall retain the value of  
20 any improvements, the downpayment, and the seller's proportionate  
21 share of appreciation. The local government shall recapture any  
22 initial subsidy and its proportionate share of appreciation, which  
23 shall then be used within three years for any of the purposes  
24 described in subdivision (e) of Section 33334.2 of the Health and  
25 Safety Code that promote homeownership.

26 (B) For purposes of this subdivision, the local government's  
27 initial subsidy shall be equal to the fair market value of the home  
28 at the time of initial sale minus the initial sale price to the  
29 moderate-income household, plus the amount of any downpayment  
30 assistance or mortgage assistance. If upon resale the market value  
31 is lower than the initial market value, then the value at the time of  
32 the resale shall be used as the initial market value.

33 (C) For purposes of this subdivision, the local government's  
34 proportionate share of appreciation shall be equal to the ratio of  
35 the initial subsidy to the fair market value of the home at the time  
36 of initial sale.

37 (d) (1) An applicant for a density bonus pursuant to subdivision  
38 (b) may submit to a city, county, or city and county a proposal for  
39 the specific incentives or concessions that the applicant requests  
40 pursuant to this section, and may request a meeting with the city,

1 county, or city and county. The city, county, or city and county  
2 shall grant the concession or incentive requested by the applicant  
3 unless the city, county, or city and county makes a written finding,  
4 based upon substantial evidence, of either of the following:

5 (A) The concession or incentive is not required in order to  
6 provide for affordable housing costs, as defined in Section 50052.5  
7 of the Health and Safety Code, or for rents for the targeted units  
8 to be set as specified in subdivision (c).

9 (B) The concession or incentive would have a specific adverse  
10 impact, as defined in paragraph (2) of subdivision (d) of Section  
11 65589.5, upon public health and safety or the physical environment  
12 or on any real property that is listed in the California Register of  
13 Historical Resources and for which there is no feasible method to  
14 satisfactorily mitigate or avoid the specific adverse impact without  
15 rendering the development unaffordable to low- and  
16 moderate-income households.

17 (2) The applicant shall receive the following number of  
18 incentives or concessions:

19 (A) One incentive or concession for projects that include at least  
20 10 percent of the total units for lower income households, at least  
21 5 percent for very low income households, or at least 10 percent  
22 for persons and families of moderate income in a common interest  
23 development.

24 (B) Two incentives or concessions for projects that include at  
25 least 20 percent of the total units for lower income households, at  
26 least 10 percent for very low income households, or at least 20  
27 percent for persons and families of moderate income in a common  
28 interest development.

29 (C) Three incentives or concessions for projects that include at  
30 least 30 percent of the total units for lower income households, at  
31 least 15 percent for very low income households, or at least 30  
32 percent for persons and families of moderate income in a common  
33 interest development.

34 (3) The applicant may initiate judicial proceedings if the city,  
35 county, or city and county refuses to grant a requested density  
36 bonus, incentive, or concession. If a court finds that the refusal to  
37 grant a requested density bonus, incentive, or concession is in  
38 violation of this section, the court shall award the plaintiff  
39 reasonable attorney's fees and costs of suit. Nothing in this  
40 subdivision shall be interpreted to require a local government to

1 grant an incentive or concession that has a specific, adverse impact,  
2 as defined in paragraph (2) of subdivision (d) of Section 65589.5,  
3 upon health, safety, or the physical environment, and for which  
4 there is no feasible method to satisfactorily mitigate or avoid the  
5 specific adverse impact. Nothing in this subdivision shall be  
6 interpreted to require a local government to grant an incentive or  
7 concession that would have an adverse impact on any real property  
8 that is listed in the California Register of Historical Resources.  
9 The city, county, or city and county shall establish procedures for  
10 carrying out this section, that shall include legislative body  
11 approval of the means of compliance with this section. The city,  
12 county, or city and county shall also establish procedures for  
13 waiving or modifying development and zoning standards that  
14 would otherwise inhibit the utilization of the density bonus on  
15 specific sites. These procedures shall include, but not be limited  
16 to, such items as minimum lot size, side yard setbacks, and  
17 placement of public works improvements.

18 (e) In no case may a city, county, or city and county apply any  
19 development standard that will have the effect of precluding the  
20 construction of a development meeting the criteria of subdivision  
21 (b) at the densities or with the concessions or incentives permitted  
22 by this section. An applicant may submit to a city, county, or city  
23 and county a proposal for the waiver or reduction of development  
24 standards and may request a meeting with the city, county, or city  
25 and county. If a court finds that the refusal to grant a waiver or  
26 reduction of development standards is in violation of this section,  
27 the court shall award the plaintiff reasonable attorney's fees and  
28 costs of suit. Nothing in this subdivision shall be interpreted to  
29 require a local government to waive or reduce development  
30 standards if the waiver or reduction would have a specific, adverse  
31 impact, as defined in paragraph (2) of subdivision (d) of Section  
32 65589.5, upon health, safety, or the physical environment, and for  
33 which there is no feasible method to satisfactorily mitigate or avoid  
34 the specific adverse impact. Nothing in this subdivision shall be  
35 interpreted to require a local government to waive or reduce  
36 development standards that would have an adverse impact on any  
37 real property that is listed in the California Register of Historical  
38 Resources.

39 (f) The applicant shall show that the waiver or modification is  
40 necessary to make the housing units economically feasible.

(g) For the purposes of this chapter, “density bonus” means a density increase over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35



(3) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. As used in subdivision (b), “total units” or “total dwelling units” does not include units permitted by a density bonus awarded pursuant to this section or any local law granting a greater density bonus. The density bonus provided by this section shall apply to housing developments consisting of five or more dwelling units.

(h) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county as provided for in this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks both the increase required pursuant to this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible. No later than the date of approval of the final subdivision map, parcel map, or of the residential development, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government prior to the time of transfer.

(D) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of dedication.

(E) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may

1 require the applicant to identify and transfer the land to the  
2 developer.

3 (F) The transferred land shall be within the boundary of the  
4 proposed development or, if the local agency agrees, within  
5 one-quarter mile of the boundary of the proposed development.

6 (i) (1) When an applicant proposes to construct a housing  
7 development that conforms to the requirements of subdivision (b)  
8 and includes a child care facility that will be located on the  
9 premises of, as part of, or adjacent to, the project, the city, county,  
10 or city and county shall grant either of the following:

11 (A) An additional density bonus that is an amount of square  
12 feet of residential space that is equal to or greater than the amount  
13 of square feet in the child care facility.

14 (B) An additional concession or incentive that contributes  
15 significantly to the economic feasibility of the construction of the  
16 child care facility.

17 (2) The city, county, or city and county shall require, as a  
18 condition of approving the housing development, that the following  
19 occur:

20 (A) The child care facility shall remain in operation for a period  
21 of time that is as long as or longer than the period of time during  
22 which the density bonus units are required to remain affordable  
23 pursuant to subdivision (c).

24 (B) Of the children who attend the child care facility, the  
25 children of very low income households, lower income households,  
26 or families of moderate income shall equal a percentage that is  
27 equal to or greater than the percentage of dwelling units that are  
28 required for very low income households, lower income  
29 households, or families of moderate income pursuant to subdivision  
30 (b).

31 (3) Notwithstanding any requirement of this subdivision, a city,  
32 county, or a city and county shall not be required to provide a  
33 density bonus or concession for a child care facility if it finds,  
34 based upon substantial evidence, that the community has adequate  
35 child care facilities.

36 (4) "Child care facility," as used in this section, means a child  
37 day care facility other than a family day care home, including, but  
38 not limited to, infant centers, preschools, extended day care  
39 facilities, and schoolage child care centers.

1 (j) "Housing development," as used in this section, means one  
2 or more groups of projects for residential units constructed in the  
3 planned development of a city, county, or city and county. For the  
4 purposes of this section, "housing development" also includes a  
5 subdivision or common interest development, as defined in Section  
6 1351 of the Civil Code, approved by a city, county, or city and  
7 county and consists of residential units or unimproved residential  
8 lots and either a project to substantially rehabilitate and convert  
9 an existing commercial building to residential use or the substantial  
10 rehabilitation of an existing multifamily dwelling, as defined in  
11 subdivision (d) of Section 65863.4, where the result of the  
12 rehabilitation would be a net increase in available residential units.  
13 For the purpose of calculating a density bonus, the residential units  
14 do not have to be based upon individual subdivision maps or  
15 parcels. The density bonus shall be permitted in geographic areas  
16 of the housing development other than the areas where the units  
17 for the lower income households are located.

18 (k) The granting of a concession or incentive shall not be  
19 interpreted, in and of itself, to require a general plan amendment,  
20 local coastal plan amendment, zoning change, or other discretionary  
21 approval. This provision is declaratory of existing law.

22 (l) For the purposes of this chapter, concession or incentive  
23 means any of the following:

24 (1) A reduction in site development standards or a modification  
25 of zoning code requirements or architectural design requirements  
26 that exceed the minimum building standards approved by the  
27 California Building Standards Commission as provided in Part 2.5  
28 (commencing with Section 18901) of Division 13 of the Health  
29 and Safety Code, including, but not limited to, a reduction in  
30 setback and square footage requirements and in the ratio of  
31 vehicular parking spaces that would otherwise be required that  
32 results in identifiable, financially sufficient, and actual cost  
33 reductions.

34 (2) Approval of mixed use zoning in conjunction with the  
35 housing project if commercial, office, industrial, or other land uses  
36 will reduce the cost of the housing development and if the  
37 commercial, office, industrial, or other land uses are compatible  
38 with the housing project and the existing or planned development  
39 in the area where the proposed housing project will be located.

1 (3) Other regulatory incentives or concessions proposed by the  
2 developer or the city, county, or city and county that result in  
3 identifiable, financially sufficient, and actual cost reductions.

4 This subdivision does not limit or require the provision of direct  
5 financial incentives for the housing development, including the  
6 provision of publicly owned land, by the city, county, or city and  
7 county, or the waiver of fees or dedication requirements.

8 (m) Nothing in this section shall be construed to supersede or  
9 in any way alter or lessen the effect or application of the California  
10 Coastal Act (Division 20 (commencing with Section 30000) of  
11 the Public Resources Code.

12 (n) Nothing in this section shall be construed to prohibit a city,  
13 county, or city and county from granting a density bonus greater  
14 than what is described in this section for a development that meets  
15 the requirements of this section or from granting a proportionately  
16 lower density bonus than what is required by this section for  
17 developments that do not meet the requirements of this section.

18 (o) For purposes of this section, the following definitions shall  
19 apply:

20 (1) "Development standard" includes site or construction  
21 conditions that apply to a residential development pursuant to any  
22 ordinance, general plan element, specific plan, charter amendment,  
23 or other local condition, law, policy, resolution, or regulation.

24 (2) "Maximum allowable residential density" means the density  
25 allowed under the zoning ordinance, or if a range of density is  
26 permitted, means the maximum allowable density for the specific  
27 zoning range applicable to the project.

28 (p) (1) Upon the request of the developer, no city, county, or  
29 city and county shall require a vehicular parking ratio, inclusive  
30 of handicapped and guest parking, of a development meeting the  
31 criteria of subdivision (b), that exceeds the following ratios:

32 (A) Zero to one bedrooms: one onsite parking space.

33 (B) Two to three bedrooms: two onsite parking spaces.

34 (C) Four and more bedrooms: two and one-half parking spaces.

35 (2) If the total number of parking spaces required for a  
36 development is other than a whole number, the number shall be  
37 rounded up to the next whole number. For purposes of this  
38 subdivision, a development may provide "onsite parking" through  
39 tandem parking or uncovered parking, but not through onstreet  
40 parking.

1     (3) This subdivision shall apply to a development that meets  
2     the requirements of subdivision (b) but only at the request of the  
3     applicant. An applicant may request additional parking incentives  
4     or concessions beyond those provided in this section, subject to  
5     subdivision (d).

O